

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Electric Transmission Incentives Policy Under
Section 219 of the Federal Power Act

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Docket No. RM20-10-000

**NOTICE OF JUDICIAL OPINION AND COMMENTS OF
THE CONSUMER ALLIANCE**

The Industrial Energy Consumers of America (“IECA”), American Forest & Paper Association, PJM Industrial Customer Coalition, Coalition of MISO Transmission Customers, the Resale Power Group of Iowa, and Wisconsin Industrial Energy Group (“Consumer Alliance”) hereby notice the Commission of a recent pertinent appellate court decision that directly impacts the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) electric transmission incentives policy under Section 219 of the Federal Power Act (“FPA”) that warrants an expeditious change in policy as to how the Commission reviews, processes, and authorizes an abandoned plant incentive to a transmission owner for a qualifying project.

On January 14, 2025, the D.C. Circuit Court of Appeals in *Industrial Energy Consumers of America et al. v. FERC*, 125 F.4th 1156 (D.C. Cir. Jan. 14, 2025) (“Incentives Decision”)¹ dismissed a petition for review from consumers challenging the issuance of an abandoned plant incentive to a transmission owner in the Midcontinent Independent System Operator, Inc. (“MISO”) region on the grounds that the consumers lacked standing and did not demonstrate any imminent injury under Article III of the United States Constitution. Notably, the Commission before the D.C. Circuit did not challenge consumer standing and asserted that the challenging

¹ The Court denied a petition for panel rehearing on April 28, 2025. The Court’s mandate to FERC was issued on May 6, 2025.

consumers were aggrieved by the Commission’s issuance of the final orders at issue given the final incentives conclusions could not later be revisited.² As a result of the D.C. Circuit’s holding, consumers do not enjoy the right to judicial review of a final Commission order authorizing an abandoned plant incentive.³ Now, under the existing regulatory regime, consumers are disincentivized from protesting an abandoned plant incentive application before FERC (because it would be an exercise in futility), while utilities (in the absence of any viable challenge) are even further encouraged to seek and obtain the right to recover 100% of prudently incurred costs in transmission rates for abandoned projects, regardless of the degree of risks presented by the project. To ensure consumers are protected under the FPA, the Commission must reform and change its two-stage approach to reviewing and authorizing abandoned plant incentives.

I. DESCRIPTION OF CONSUMER ALLIANCE

The Consumer Alliance is comprised of several consumer-oriented parties that have expressed longstanding concerns about transmission planning, transmission rates, transmission affordability, transmission incentives, and economic efficiency over the past several years in several different RTO/ISO regions and non-RTO/ISO regions in the United States.

Industrial Consumers of America. IECA is a nonpartisan association of leading manufacturing companies with \$1.3 trillion in annual sales, over 12,000 facilities nationwide, and with more than 1.9 million employees. IECA was founded on the belief that a robust, diverse and affordable supply of energy is required to sustain economic growth, quality of life for our citizens, and the competitiveness of industry. IECA promotes the interests of manufacturing companies through advocacy and collaboration for which the availability, use and

² See “Brief of the Federal Energy Regulation Commission,” *Industrial Energy Consumers of America et al. v. FERC*, Case No. 23-1334, at 27, n. 5 (filed May 3, 2024) (hereinafter “FERC Brief on Incentives”).

³ See *IECA v. FERC*, 125 F.4th at 1158-59, 1161-1163.

cost of energy, power or feedstock play a significant role in their ability to compete in domestic and world markets. IECA membership represents a diverse set of industries including: chemicals, plastics, steel, iron ore, aluminum, paper, food processing, fertilizer, insulation, glass, industrial gases, pharmaceutical, consumer goods, building products, automotive, independent oil refining, and cement all of which use tremendous amounts of electricity in their industrial processes. IECA has members throughout the United States. The U.S. manufacturing sector consumes approximately 34% of U.S. electricity production. The vast majority of IECA member companies are energy intensive trade exposed, which means that relatively small increases in the price of electricity can have relatively high negative impacts to their global competitiveness – directly impacting jobs and investment. IECA served as the lead petitioner in the case that led to the Incentives Decision. IECA also participated in substantive comments in this rulemaking proceeding.

American Forest & Paper Association (“AF&PA”). AF&PA serves to advance a sustainable U.S. pulp, paper, packaging, tissue, and wood products manufacturing industry through fact-based public policy and marketplace advocacy. AF&PA member companies make products essential for everyday life from renewable and recyclable resources and are committed to continuous improvement through the industry’s sustainability initiative – *Better Practices, Better Planet 2020*. The forest products industry accounts for approximately 4% of the total U.S. manufacturing GDP, manufactures over \$200 billion in products annually, and employs approximately 900,000 men and women. The industry meets a payroll of approximately \$50 billion annually and is among the top 10 manufacturing sector employers in 45 states. AF&PA member companies purchase a significant amount of electricity in Commission-regulated

markets, and have observed transmission charges as a growing portion of their total charges for electricity. AF&PA participated in substantive comments in this rulemaking proceeding.

PJM Industrial Customer Coalition. PJMICC is a continuing *ad hoc* association of large industrial and commercial end-users of electricity in the PJM Interconnection, L.L.C. (“PJM”) region operated for the purposes of representing the interests of large energy consumers. PJMICC member companies pay transmission rates that are assessed by PJM transmission owners, and have observed transmission charges as a growing portion of their total charges for electricity. PJMICC’s members include manufacturers and other energy-intensive consumers. Increased energy costs impair PJMICC members’ competitiveness and have directly contributed to elevated risks of facility closures and job losses. PJMICC participated in substantive comments in this rulemaking proceeding.

Coalition of MISO Transmission Customers. CMTC is a continuing *ad hoc* association of large industrial and commercial end-users of electricity in the Midwest operated to represent the interests of industrial energy consumers before regulatory and legislative bodies. CMTC has participated in the MISO market/transmission issues since the inception of CMTC more than 20 years ago. CMTC member companies pay transmission rates that are assessed by MISO transmission owners. Some CMTC member facilities are assessed transmission charges as a separate, stand-alone charge on invoices assessed by market suppliers. Other CMTC facilities pay for transmission charges on a bundled basis, as a component of retail electricity charges that also included charges for generation and distribution service. CMTC’s members include manufacturers and other energy-intensive consumers. Increased energy costs impair CMTC members’ competitiveness and have directly contributed to elevated risks of facility closures and

job losses. CMTC served as a petitioner in the case that led to the Incentives Decision. CMTC also participated in substantive comments in this rulemaking proceeding.

Resale Power Group of Iowa. RPGI is a special-purpose governmental entity organized in 1986 pursuant to Iowa law to purchase electric supply, transmission, and related services as agent for its members. RPGI's members are 24 Iowa municipal utilities, one cooperative, and one privately-owned utility that (with one exception)⁴ are exempt from the Commission's jurisdiction under Section 201(f) of the FPA.⁵ RPGI is legally separate and fiscally independent from other state and local governmental entities. The electric transmission rates paid by most RPGI members are determined primarily according to the Network Integration Transmission Service ("NITS") Schedule 9 formula rate for ITC Midwest, LLC set forth in MISO's transmission tariff. RPGI's members that do not receive NITS from ITC Midwest purchase that service from MidAmerican Energy Transmission Company. Other RPGI members located outside MISO are pseudo-tied into MISO where they purchase MISO Schedule 7 Point to Point transmission service. Over the past 15 years, RPGI's members have experienced staggering increases in transmission rates, especially the rates of ITC Midwest, that have eliminated any benefit of reduced purchased power costs or congestion relief from new infrastructure projects and have created such significant rate disparities among Iowa transmission providers that some members have bypassed ITC Midwest's system, choosing to incur significant new interconnection facility costs rather than continuing to pay ITC Midwest's higher rate. RPGI

⁴ The Amana Society Service Company is a small transmission-dependent electric utility that is privately owned by the Amana Society and provides service only to retail customers within the service territory of the Amana Society in Iowa. Because of its size, it is not subject to rate regulatory authority of the Iowa Utilities Commission.

⁵ 16 U.S.C § 824f.

served as a petitioner in the case that led to the Incentives Decision. RPGI also participated in substantive comments in this rulemaking proceeding.

Wisconsin Industrial Energy Group. WIEG is a voluntary member association consisting of large industrial and commercial customers in the State of Wisconsin. WIEG is concerned about affordability and the impact the rising trend in transmission costs will have on customers. Wisconsin's advocacy groups, including WIEG, have worked hard to remove barriers to competitive bidding in Wisconsin. Cost effective transmission is crucially important now more than given MISO's costly four-tranche long-range regional transmission planning initiative. Wisconsin manufacturers cannot afford rate hikes due to unnecessary or wasteful spending caused by inefficient and uncompetitive transmission planning. WIEG served as a petitioner in the case that led to the Incentives Decision.

II. THE IMPACT OF THE INCENTIVES DECISION ON CONSUMER STANDING

A. Procedural Background

On May 30, 2023, ITC Midwest filed an application requesting Commission approval pursuant to Section 205 of the Federal Power Act to recover 100% of prudently incurred costs associated with a long-range transmission project in Iowa if the project is cancelled or abandoned for reasons beyond ITC Midwest's control (*i.e.*, the Abandoned Plant Incentive).⁶

On June 20, 2023, a subset of the Consumer Alliance protested, arguing that it was premature to authorize the incentive given the existence of an Iowa state court injunction raising doubt on the authority of ITC Midwest to own and operate the project.⁷ The consumers, among

⁶ See *ITC Midwest, LLC*, ITC Midwest Abandonment Incentive Application, Docket No. ER23-2033 (filed May 30, 2023).

⁷ See *ITC Midwest, LLC*, Consumer Alliance Protest, Docket No. ER23-2033 (filed June 20, 2023) ("Consumer Alliance Protest").

other things, argued that ITC Midwest had not demonstrated that the abandonment incentive was warranted, that the incentive would produce just and reasonable rates, and that the incentive request was narrowly tailored to address project risks consistent with FERC Order No. 679.⁸

On August 8, 2023, the Commission approved the abandoned plant incentive request over consumer objections. Commissioner Christie dissented, finding “no compelling reason to grant ITC Midwest the Abandoned Plant Incentive right now.”⁹ The consumers sought rehearing. On November 16, 2023, the Commission denied rehearing. Commissioner Christie again dissented.

On December 4, 2023, the consumers filed a petition for review with the D.C. Circuit, challenging the Commission’s final orders issued in Docket No. ER23-2033. The consumers exercised their appellate court rights before the D.C. Circuit and fully litigated their appeal. After briefing and oral argument, the D.C. Circuit dismissed the consumers’ petition on standing grounds in the Incentives Decision issued on January 14, 2025. Subsequently, on April 28, 2025, the D.C. Circuit denied a petitioner’s request for panel rehearing.

B. Because Consumers Do Not Have Judicial Review Rights to Challenge the Authorization of Abandoned Plant Incentives, the Commission Must Expeditiously Reform Its Two-Stage Procedures for Reviewing Abandoned Plant Incentives.

Consumer standing and matters pertaining to directly affected parties under Commission Rule 214(b)(2)(ii)¹⁰ were not addressed by the Commission in the final orders issued by the Commission in Docket No. ER23-2033.¹¹ In fact, the word “standing” does not appear in either

⁸ *Promoting Transmission Inv. Through Pricing Reform*, Order No. 679, 116 FERC ¶ 61,057 (2006), *order on reh’g*, Order No. 679-A, 117 FERC ¶ 61,345 (2006), *order on reh’g*, 119 FERC ¶ 61,062 (2007).

⁹ *ITC Midwest, LLC*, Order on Transmission Rate Incentive, Commissioner Christie Dissent, 184 FERC ¶ 61,083 (Aug. 8, 2023).

¹⁰ Per Rule 214, 18 CFR § 385.214(b)(2)(ii), the Commission envisions that a consumer directly affected by the outcome of the proceeding would have an interest in intervening.

¹¹ *See generally ITC Midwest, LLC*, Order on Transmission Rate Incentive, 184 FERC ¶ 61,083 (Aug. 8, 2023) and *ITC Midwest, LLC*, Order Addressing Arguments Raised on Rehearing, 185 FERC ¶ 61,123 (Nov. 16, 2023). The appeal of those final FERC orders led to the Incentives Decision.

of the Commission’s final orders, and the Commission addressed the consumers’ protest and request for rehearing as though the consumers enjoyed a right under the FPA to challenge the incentive request.

During the D.C. Circuit appeal, challenges to consumer standing were raised by ITC Midwest in its intervenor brief and through inquiry by the judges during oral argument.¹² The Commission itself both on brief and during oral argument supported the consumers’ standing, recognizing that, precluding consumers from judicial review would eviscerate the right and ability for consumers to actually challenge an abandoned plant incentive application filed with the Commission. The Commission emphasized on brief that the Commission’s orders in Docket No. ER23-2033 regarding the authorization of the abandoned plant incentive to ITC Midwest were “final...as to ITC Midwest’s receipt of the abandonment incentive and the Commission’s explanation for granting it.”¹³ The Commission further explained:

In the [August 8, 2023] Incentive Order, the Commission found that ITC Midwest was eligible for an abandonment incentive regarding the Project. **This conclusion has legal consequences in future Project-related ratemaking proceedings regarding the proportion of prudently-incurred costs that may be recoverable from customers and it cannot be relitigated later.**¹⁴

Accordingly, the Commission recognized that, if FERC’s orders authorizing the incentive were not final, then consumers or challengers in a future cost recovery proceeding could presumably still argue against the Commission’s authorization of the incentive in the first place, thereby calling into question the point of incenting a utility and requiring a utility to ask for pre-

¹² The oral argument in *IECA v. FERC* (Case No. 23-1334), held on November 14, 2024, is available here: media.cadc.uscourts.gov/recordings/docs/2024/11/23-1334.mp3 (last accessed May 15, 2025).

¹³ See “Brief of the Federal Energy Regulation Commission,” *Industrial Energy Consumers of America et al. v. FERC*, Case No. 23-1334, at 27 (filed May 3, 2024).

¹⁴ See “Brief of the Federal Energy Regulation Commission,” *Industrial Energy Consumers of America et al. v. FERC*, Case No. 23-1334, at 27, n. 5 (filed May 3, 2024) (emphasis added).

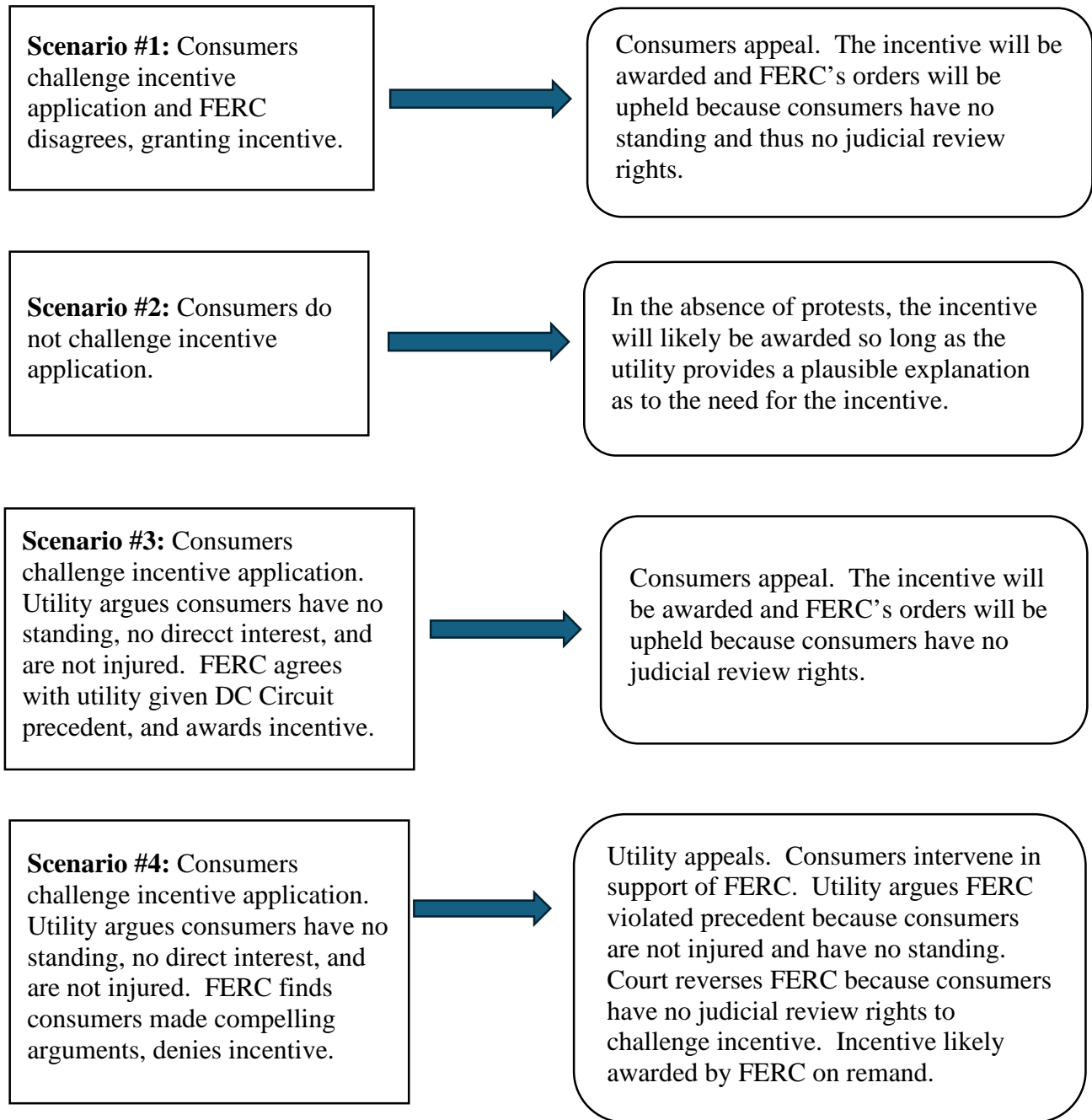
approval of the incentive. Further, in the absence of a final, non-appealable order authorizing the incentive, the utility would not receive sufficient certainty regarding the authorization of the incentive if the authorization of the incentive (and not just whether costs were prudently incurred) could be challenged in a future cost recovery proceeding. However, if consumers are deprived of judicial review to challenge FERC's initial authorization of the abandoned plant incentive and if consumers cannot later challenge the authorization of the incentive during any future cost recovery proceeding, then consumers are ultimately denied due process and the consumer protections afforded under the FPA and under the framework in Order No. 679.¹⁵ The Commission recognized this conundrum before the D.C. Circuit, and therefore has an obligation to expeditiously reform its procedures for reviewing, authorizing, and approving abandoned plant incentive requests.

The denial of consumer standing by the D.C. Circuit confirms the concerns raised by consumers during the ITC Midwest incentive proceeding that the incentive application process is a perfunctory, check-the-box exercise.¹⁶ As if it were not already difficult enough to successfully oppose an incentives request under Order No. 679,¹⁷ now, under the Commission's regime for granting and approving the abandoned plant incentive, the challenger to any abandoned plant incentive application is doomed to lose, as illustrated in the following scenarios.

¹⁵ See Order No. 679 at 117 (recognizing that any incentive must "reasonably balance consumers' interests in fair rates against investors' interest in 'maintaining financial integrity and access to capital markets.'" (quoting *Jersey Central Power & Light v. FERC*, 810 F.2d 1168, 1178 (D.C. Cir. 1987)).

¹⁶ Consumer Alliance Protest at 19 (citing *Midcontinent Indep. Sys. Operator, Inc.*, 182 FERC 61,039 (2023) (Christie concurrence, P 2) (Expressing concern that the Commission's determination of whether substantial risks and challenges exist when granting the Abandoned Plant Incentive and other incentives has become nothing more than a check-the-box exercise)).

¹⁷ The appendices recently filed by WIRES, the Edison Electric Institute, and GridWise Alliance, Inc. demonstrate that the Commission has historically and prolifically awarded abandoned plant incentive and construction work in progress incentive requests. See "Joint Supplemental Comments of WIRES, the Edison Electric Institute, and GridWise Alliance," *Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act*, Docket No. RM20-10-000, Appendices A and B (filed Apr. 3, 2025).



Here, the consumer is a victim of Catch-22, and like the protagonist in the novel, is caught between a paradoxical rock and a hard place.¹⁸ The only way for the consumer to challenge the

¹⁸ The only way for John Yossarian, the pilot in *Catch-22*, to avoid flying dangerous missions, would be for Yossarian to request a mental evaluation hoping he was not sane enough to fly. Yet, Yossarian's rational request to

abandoned plant incentive application is for the consumer to protest that application in vain, knowing that there is little to no chance of success.¹⁹ Further, the consumer is precluded from arguing that any incurrence of project costs in the future would be imprudent under the particular circumstances of the case at the time the utility seeks FERC approval for the abandoned plant incentive. In denying the Consumer Alliance’s challenge to the ITC Midwest abandoned plant incentive, the Commission explained: “we will not determine the prudence of any costs incurred prior to the abandonment, if any, until ITC Midwest seeks such recovery in a future section 205 filing.”²⁰ On rehearing, the Consumer Alliance asked the Commission to find that circumstances around the applicant’s incentive request would lead to imprudently incurred costs because incurrence of certain costs would not be “beyond the control” of the utility; however, the Commission denied that request and explained that it “will not prejudge the outcome of this future hypothetical section 205 proceeding” where the Consumer Alliance and others may raise prudence challenges.²¹ Yet, under the Commission’s orders and Order No. 679’s framework, the right to raise a prudence challenge in the future cost recovery proceeding does not entitle the challenger to also question the authorization of the incentive in the first place.²²

seek the mental evaluation would confirm his sanity, thereby not allowing Yossarian to obtain a finding he is insane and thus not required to fly dangerous missions.

¹⁹ While the DC Court of Appeals recently denied consumer standing in the Incentives Decision, the Court did not alter its precedent holding that a utility enjoys the right on appeal to challenge the scope of an incentive awarded to the utility. *See IECA v. FERC*, 125 F.4th at 1159, 1161 (citing *San Diego Gas & Elec. v. FERC*, 913 F.3d 127, 130, 136 (D.C. Cir. 2019)).

²⁰ *ITC Midwest, LLC*, 184 FERC ¶ 61,083 at P 48 (Aug. 8, 2023) (citing Order No. 679, 116 FERC ¶ 61,057 at P 163). Commissioner Christie dissented and explained that “no compelling reason” exists to grant the incentive given the pending Iowa state litigation concerning the constitutionality of the law to which ITC Midwest claimed rights to the project for which it seeks the incentive. *See id.*, Christie Dissent at P 1.

²¹ *ITC Midwest, LLC*, 185 FERC ¶ 61,123 at PP 39-41 (Nov. 16, 2023).

²² *See ITC Midwest, LLC*, 184 FERC ¶ 61,083 at PP 43-44 (citing Order No. 679 at PP 163-166). On brief to the D.C. Circuit, the Commission explained that “‘whether the applicant’s facility qualifies to receive’ incentives is determined at the first step and not revisited later.” FERC Brief on Incentives at 27, n. 5 (quoting Order No. 679 at PP 20, 77-78).

As reflected in the Commission’s brief in response to the petition for panel rehearing in Case No. 23-1334, the Commission agrees wholly with the D.C. Circuit’s determination in the Incentives Decision on standing issues and asserts that “no correction to the Court’s opinion is necessary here.”²³ Therefore, it appears that the Commission, in its brief in response to the petition for panel rehearing, departed from its positions advanced in its main brief and during oral argument contending that consumers had the right to challenge FERC’s final orders regarding the award of an abandoned plant incentive.

The “primary aim [of the FPA] is the protection of consumers from excessive rates and charges.”²⁴ Section 219 of the FPA authorizes incentive-based rate treatments “for the *purpose of benefitting consumers by ensuring reliability and reducing the cost of delivered power by reducing transmission congestion.*”²⁵ Given the D.C. Circuit’s holding in the Incentives Decision and the Commission’s accession to it, it follows that consumers (and other challengers) – in any proceeding concerning the requested recovery of abandoned plant incentive costs – must now enjoy the right to raise prudence concerns *and* challenge the authorization of the incentive because consumers do not have judicial review rights to challenge the authorization of the incentive during the initial abandoned plant incentive application proceeding. Otherwise, consumers will be forced to pay for abandoned electric plant – that is not used and useful and never placed in service –

²³ “Response of Respondent Federal Energy Regulation Commission in Opposition to Petition for Panel Rehearing,” *Industrial Energy Consumers of America et al. v. FERC*, Case No. 23-1334, at 4 (filed Apr. 10, 2025).

²⁴ *Xcel Energy Servs. v. FERC*, 815 F.3d 947, 952 (D.C. Cir. 2016), citing *Mun. Light Bds. of Reading & Wakefield v. FPC*, 450 F.2d 1341, 1348 (D.C. Cir. 1971), cert. denied, 405 U.S. 989 (1972); Energy Policy Act of 2005 (the EPAct), 16 U.S.C. § 824s(a) (2005) (directing the Commission to “establish, by rule, incentive-based ... rate treatments for the transmission of electric energy ... for the purpose of benefitting consumers by ... reducing the cost of delivered power by reducing transmission congestion”).

²⁵ 16 U.S.C. § 824s(a) (emphasis added).

without sufficient due process rights to challenge the authorization of abandoned plant incentive at the outset.

Chair Christie summarized the drawback of the Abandoned Plant Incentive in a July 29, 2024 dissenting statement:

The Abandoned Plant Incentive is nothing more than a transfer of wealth from consumers to transmission developers and risk from developers to consumers... The longer the Commission does nothing to address these unfair transfers of wealth and risk, the more consumers are exploited.²⁶

Given the Incentives Decision, effectuating an uncontested transfer of wealth and risk is now easier because consumers do not have standing to challenge the awarded abandoned plant incentive.

If the Commission determines that some level of an abandoned plant incentive is necessary,²⁷ then the Commission could revert to its longstanding rule that allows a utility (without any pre-approval application) to seek recovery of 50% of any abandoned plant costs that were prudently incurred.²⁸ Such an approach would allocate losses associated with prudently incurred costs for abandoned plant equally (50-50) between the utility's ratepayers and investors. Further, such an approach would remove the first pre-approval authorization application, which has become perfunctory and is now unworkable in light of the Incentives Decision holding that consumers do not have judicial review to challenge the incentive award at the first stage. Accordingly, the Consumer Alliance asks the Commission to reform its procedures for reviewing and approving the abandoned plant incentive.

²⁶ "Order on Abandoned Plant Incentive," *PPL Elec. Utils.*, 188 FERC ¶ 61, 084 (2024) (Christie Dissent, P 1) (emphasis added).

²⁷ The Consumer Alliance does not concede that the Abandoned Plant Incentive is necessary to spur investment.

²⁸ See *New England Power Co.*, Opinion No. 295, 42 FERC ¶ 61,016, 61,081-82 (1988), *on reh'g*, Opinion No. 295-A, 43 FERC ¶ 61,285 (1988); see also *PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,015 at PP 7-12 (2018) (100% abandoned plant cost recovery applies to costs incurred after FERC order granting incentive and costs incurred before order authorizing 100% abandoned plant cost recovery are eligible for only 50% cost recovery); *Potomac Edison Co.*, 165 FERC ¶ 61,168 at p. 22, n.45 (2018) (authority to recover 50% of canceled plant costs incurred prior to FERC order granting the incentive is not transmission rate incentive requiring action under Order No. 679).

III. THE COMMISSION MUST REFORM PROCEDURES AROUND AUTHORIZING TRANSMISSION INCENTIVES – WHETHER IN THIS DOCKET OR ANOTHER PROCEEDING

On April 3, 2025, WIRES, the Edison Electric Institute, and GridWise Alliance, Inc. (collectively, “WIRES”) filed supplemental comments in this docket and requested the Commission terminate this rulemaking proceeding.²⁹

On April 18, 2025, the Connecticut Public Utilities Regulatory Authority, the New York State Public Service Commission, and the Massachusetts Municipal Wholesale Electric Company all submitted answers in opposition to WIRES’ comments and request to terminate this docket. On May 5, 2025, the Transmission Access Policy Study Group (“TAPS”) also submitted an answer in opposition to WIRES. The Organization of PJM States, Inc. and the Virginia State Corporation Commission also opposed WIRES’ comments in answers filed on May 9, 2025 and May 14, 2025.

WIRES has not demonstrated that the existing incentives framework is working properly, is effectively balancing utility and consumer interests, and is ensuring a timely and cost-efficient transmission buildout. The Commission should not terminate this rulemaking proceeding. TAPS emphasized that WIRES’ stated basis for terminating the docket – the need for expanded transmission investment – actually demonstrates the need “for immediate action to avoid imposing excessive charges on consumers for that investment.”³⁰ The anticipated transmission buildout “must be achieved at the ‘lowest reasonable rates.’”³¹ The Consumer Alliance agrees. WIRES has demonstrated via Appendix A and Appendix B to its comments that the Commission has historically and prolifically awarded the abandoned plant incentive (for more than 190 projects in

²⁹ See “Joint Supplemental Comments of WIRES, the Edison Electric Institute, and GridWise Alliance,” *Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act*, Docket No. RM20-10-000, Appendices A and B (filed Apr. 3, 2025).

³⁰ “Answer of TAPS to WIRES Comments,” Docket No. RM20-10-000, at 2 (filed May 5, 2025).

³¹ “Answer of TAPS to WIRES Comments,” at 4.

over 120 cases) and the construction work in progress incentive (for more than 130 projects in over 75 cases) since 2006. Given the planned transmission investment and recent long-range project approvals, incentive requests (and any future cost recovery proceedings) are expected to exponentially increase, placing severe upward pressure on rates.

WIRES contends, without support or citation, that closing this docket would “align transmission incentive policy with national energy policy.”³² Here, WIRES overlooks the Commission’s fundamental statutory obligation under Sections 205, 206 and 219 of the FPA (governing transmission infrastructure investment) to ensure just and reasonable rates. Further, WIRES claims that the “two-tiered process” governing the abandoned plant incentive “ensures customer protection.”³³ However, WIRES does not address the impact of the Incentives Decision on the ability for consumers to obtain redress in challenging the incentive during the first tier, and WIRES fails to rebut Chair Christie’s substantive critique of incentives:

Further, just as the CWIP Incentive effectively makes consumers the bank for transmission developers, the Abandoned Plant Incentive effectively makes them the insurer of last resort as well. This incentive allows transmission developers to recover from consumers the costs of investments in projects that fail to materialize and thus do not benefit consumers. Just as consumers receive no interest for the money they effectively loan transmission developers through CWIP, they receive no premiums for the insurance they provide through the Abandoned Plant Incentive if the project is never built. And if the CWIP Incentive is a de facto loan and the Abandoned Plant Incentive is de facto insurance — both provided by consumers — then the RTO participation adder, which increases the transmission owner’s ROE above the market cost of equity capital, is an involuntary gift from consumers. There is something really wrong with this picture.³⁴

³² WIRES Comments, Docket No. RM20-10-000, at 20. Contrary, to WIRES’ assertion, federal energy policy appears focused on reducing energy costs and ensuring reliable and affordable energy. *See generally* “Unleashing American Energy,” Executive Order Issued Jan. 20, 2025). Further, FERC Chair Christie has emphasized the importance of “protecting consumers from excessive increases in costs,” emphasizing that, while FERC cannot control commodity or distribution costs, it can “control transmission rates.” *New FERC Chairman Mark C. Christie Aims to Keep Things Running Smoothly at FERC Despite Challenges*, Energy Bar Association (G. Guy and D. Connelly) at 7 (Feb. 2025), available at <https://www.eba-net.org/wp-content/uploads/2025/02/2025-eba-brief-article-chairman-christie-2-18.pdf>

³³ WIRES Comments, Docket No. RM20-10-000, at 14.

³⁴ *Midcontinent Indep. Sys. Operator, Inc.*, 182 FERC 61,039 (2023) (Christie concurrence, P 3).

The Commission does not need to expand the existing record in this docket to proceed to issue a final rule that protects consumers, and among other things, limits a utility's eligibility for the RTO participation adder to a 50-basis-point return on equity incentive for the first three years after the utility joins the RTO/ISO and removes the transco adder.³⁵ The need to reform procedures governing the abandoned plant incentive in light of the recent Incentives Decision should not delay any near-term action envisioned by the Commission in this docket. Assuming that the Commission does not plan to reopen the record in this docket or issue a supplemental rulemaking, then the Commission could reform the abandoned plant incentive procedures (and any other pertinent incentives issues not addressed in this docket) in another proceeding that generates a new record. As Chair Christie recently emphasized in a dissenting statement to a Commission order authorizing a bounty of incentives:

- ...it is long past time for this Commission to do its job of protecting consumers by cutting back on its unfair practice of handing out “FERC candy” without any serious consideration of the impact on consumers...³⁶
- Costs associated with the Commission's inaction on incentives have been mounting and will continue to be inflicted on consumers unless the Commission acts. It is time to act now.³⁷

³⁵ See generally “Comments of American Manufacturers,” Docket No. RM20-10-000 (filed July 1, 2020).

³⁶ *Valley Link Transmission et al.*, 191 FERC ¶ 61,113 (May 13, 2025) (Christie Dissent at P 1).

³⁷ *Id.* at Christie Dissent at P 21.

IV. CONCLUSION

WHEREFORE, the Consumer Alliance respectfully requests that the Commission accept this Notice of Judicial Opinion and consider these Comments as it evaluates necessary revisions to its transmission incentives policies. The Commission should not terminate this proceeding.

Respectfully submitted,

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Wisconsin Industrial Energy Group

Date: May 15, 2025

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at this 15th day of May 2025.

/s/ *Kenneth R. Stark*

Kenneth R. Stark
McNees Wallace & Nurick LLC